IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 766 & 9756 of 2003

with

CIVIL APPLICATION NOS.4532, 4533 & 3787 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANTAKAMPA MILK PRODUCERS COOPERATIVE SOCIETY LIMITED

Versus

SABARKANTHA DISTRICT COOPERATIVE MILK PRODUCERS

Appearance:

1. Special Civil Application No. 766 of 2003

MR BN PATEL for Petitioner No. 1

MR TUSHAR MEHTA for Respondent No. 1

Mr.Premal Joshi,AGP for Respondent No. 2-4

MR BAIJU JOSHI for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 11/09/2003

ORAL JUDGEMENT

With the consent of learned counsel for parties matters are taken up for final hearing today. I have heard Mr.B.N.Patel for the petitioner, Mr.Tushar Mehta for respondent No.1, Mr.Joshi, Ld.AGP for respondent Nos 2,3 & 4 and Mr.Baiju Joshi for respondent No.5.

2. The short facts of the case appear to be that the petitioner is one of the member cooperative society of Sabarkantha Dist.Coop.Milk Producers' Union Ltd (hereinafter referred to as 'the Sangh/Society'). It is the case of the petitioner that the Byelaw 35(1)(A) of respondent No.1-Sangh provides that 16 members of the Managing Committee shall be elected from 7 constituencies which are identified as Division No.1 for Himmatnagar Taluka, Division No.2 for Prantij taluka, Division No.3 for Bayad taluka, Division No.4 for Modasa taluka, Division No.5 for Malpur-Meghraj taluka, Division No.6 for Idar taluka and Division No.7 for Bhiloda-Khedbrahma-Vijaynagar taluka. The grievance of the petitioner is that three talukas which are newly formed, namely, Vadali, Dhansura and Talod are not given independent representation in the said byelaws. It is also the case of the petitioner that Rule 3A(8) of the Gujarat Specified Cooperative Societies Election to Committee Rules, 1982 (hereinafter referred to as "the Rules") where the society is having the operational area of more than one village the number of constituencies shall be equal to the total number of seats excluding two seats reserved under subsection (1) of section 74B Gujarat Cooperative Societies Act (hereinafter referred to as "the Act"), and therefore, the contention of the petitioner is that as per byelaws for certain constituencies the representations are more than one and therefore under the circumstances such byelaws so far as giving representation or more than one to each constituency are in contravention to Rule 3A(8) of the aforesaid rules. It is also the case of the petitioner that as per byelaw 35 there is provision to have a co-option of three women representatives as the members of the managing committee and the case of the petitioner is that co-option as per section 74C(3) of the Act, the member of the managing committee can be inducted only by way of election and not by co-option and therefore it has been submitted that the byelaw providing for co-option of women representatives is in contravention of subsection (3) of section 74C of the Act and therefore illegal. The Sangh had taken steps for the purpose of preparation of

voters' list, and therefore, the petitioner, under these circumstances, has approached this court for various reliefs, interalia, for declaring that the election to the managing committee of respondent No.1 as per byelaw 35(1) is uncostitutional or illegal or void. The petitioners has also prayed for declaring that the co-option of three women members in the managing committee as women representatives or women members is also illegal and void and also has prayed for appropriate writ to restrain the respondents from holding election of the members of the managing committee as per byelaw 35(1) and has also prayed for giving directions to the respondent Nos 1,2 & 3 to take immediate steps /action to amend the provisions of byelaw 35(1) and for making provisions for appropriate electoral divisions/constituencies for the election to the managing committee of the respondent No.1 union after including the area forming part of newly formed talukas of Vadali, Dhansura and Talod of Sabarkantha District and for giving directions to respondents to hold elections after such amendment in the byelaws providing for electoral divisions.

3. When the petition came to be admitted by this court (coram: Miss.R.M.Doshit,J) on 28.3.03 it was ordered that the union was directed to call its next annual general meeting as soon as possible but not later than 3rd week of May, 2003 for considering the question of amendment in Byelaws. It was further directed that until the amendment to the impugned byelaw was considered in the ensuing annual general meeting, the voters' list shall not be finalised.

After the aforesaid order further extension came to be granted at the instance of the respondent No.1 for holding the annual general meeting in the last week of June, 2003 as per the order, dated 20.5.03 passed by this court (Coram: K.M.Mehta,J) in CA No.3382/03. It is further the case of the respondent No.1-Union that thereafter the matter was considered by the Board of Directors of the respondent No.1 in its meeting, dated 30.5.03 and it was found that if the byelaws are amended to make in conformity with Rule 3A(8) of the Rules the cooperative principles would not be maintained and there will be unequal representation and therefore it was resolved to take appropriate legal action and also to place relevant details before this court. It is the case of the respondent No.1 that thereafter SCA No.6524/03 is preferred by the union through its chairman and in the said petition the respondent-Sangh herein has challenged the constitutionality and validity of Rule 3A(8) of the

aforesaid Rules and in the said petition the court has passed the order (Coram: A.R.Dave,J) on 9.5.03 issuing notice and matter was ordered to be placed with this Special Civil Application No.766/03. To day in the said SCA 6524/03 this court has passed order to place the decision on behalf of respondent No.1 herein as to whether petitioner therein is desirous to prosecute the petition or otherwise. It is further the case of the respondent No.1 that the matter was placed before the Annual General Body for the purpose of considering the subject of amendment in the byelaws. However, the annual general body has in its meeting, dated 25.6.03 deferred the matter and has not taken any decision either of amending or of not amending the byelaws.

4. It may also be stated that the respondent No.1-Union has preferred SCA No.9756/03 before this court pending SCA No.766/03 for appropriate writ to restrain the respondent authorities from appointing the custodian under section 74D of the Act and the prayer is also made in the said petition to declare that the respondents have no jurisdiction, authority, competence or power to appoint custodian under section 74D of the Act. Mr.Mehta for the Sangh at the outset submitted that the Sangh has no objection for the election of the members of the Managing Committee to be held. However, he submitted that the said byelaws, particularly, bye-law 35(1)(A) has operated for three elections and therefore until the court decides the question of validity of Rule 3A(8) of the Rules, the election may be ordered to be held as per byelaw 35(1)(A). Mr.Mehta, alternatively, submitted that in case this court finds that for each constituency there should be one representative, then in that case the managing committee has made the zoning by rearranging the constituencies, namely, (i) Prantij, (ii) Talod, (iii) Himmatnaga-1, (iv) Himmatnagar-2, (v) Idar-1, (vi) Idar-2, (vii) Khedbrahma, (viii) Bhiloda, (ix) Modasa-1, (x) Modasa-2, (xi) Malpur, (xii) Bhayad-1, (xiii) Bhayad-2. The details of zonewise constituency together with the forwarding letter of General Manager addressed to the Managing Director, dated 14.7.03 are placed on record. Mr.Mehta submitted that therefore if the election is ordered by this court as per the said 13 zonewise constituencies the elected representative can be maintained constituencywise and it would be in conformity with Rule 3A(8) of the Rules. However, he submitted that this may be always a stop-gap arrangement and the same would be subject to further decision which may be taken by the general body of the Sangh to consider the matter for amendment of byelaws or otherwise. But, such an

amendment, even if it is made, would be for the next election.

5. On behalf of the petitioner, Mr.B.N.Patel has declared before the court that if the election for the Managing Committee for the present is held as per 13 zonewise constituencies, the petitioner has no objection for such arrangement because in the submission of Mr.Patel the representatives of societies of Vadali, Talod, Dhansura are accordingly included. However, he submitted that necessary direction, in any case, is called for for the purpose of amendment of byelaws so as to make it in conformity with Rule 3A(8) of the Rules, and also in conformity with Section 74C(3) of the Act.

6. In the aforesaid facts and circumstances, there is no dispute on the point that the term of three years has expired on 25.7.03 of the members of the Managing Committee coupled with the deeming fiction for continuation of term until newly elected body resumes office. As per section 74D of the Act, if the election of the members of the Managing Committee is not held or if held and newly elected body does not resume the office for one reason or the other the appointment of custodian may be made. Therefore, considering the peculiar facts and circumstances the case that the respondent No.12 is a districtlevel Sangh where there is huge operation of milk processing and considering the aspect that it is a specified cooperative society as per section 74C(3) of the Act, it has been given special status by the legislature for the purpose of holding election more or less at par with election of Legislative Assembly, I find that the election of members of the Managing Committee should and must be held at the earliest and no office bearer of the society can be allowed to continue to hold the office beyond the expiry of the statutory term and the mandate of voters. Such principles would enrich the democratic polity and also would help to maintain the atmosphere of faith of voters in the representatives.

7. If the provisions of byelaw 35(1)(A) are considered keeping in view the provisions of section 74C(3) it transpires that the provisions under the byelaws for accommodation of three women representatives comes in direct conflict with section 74C(3) of the Act in as much as section 74C(3) provides that "Notwithstanding anything in the byelaws of any such society, the committee of management shall be elected by a general body of members of the society". Section 74C(3) of the Act reads as under:

"Notwithstanding anything in the byelaws of any such society, the committee of management shall be elected by a general body of members of the society and all other committees authorised by or under the byelaws may be constituted by electing or appointing persons from among the persons who are members of the committee of management and all such committees shall be sub-committees of the committee of management and shall be subordinate to it."

On the plain reading of section 74C(3) it transpires that (i) it will have overriding effect on anyother byelaws of any such society, (ii) it also provides that the committee of the management shall be elected by general body of the members of the society, (iii) it also provides that all committees authorised by or under the byelaws may be constituted by electing or appointing persons from among the persons who are members of the committee of management. The language used by the legislature for "electing or appointing" is express in the provisio to said subsection wherein the legislature has provided power with the State Government to nominate its representative on a committee under section 80 or to nominate the first Committee of Management of any such society where the byelaws so provide.

8. Mr.Mehta learned advocate appearing for respondent No.1 made an attempt to submit that the provisions of subsection (3) means and provides for election of only those members who are required to be elected and it does not provide that there can not be any co-option. He further submitted that the purpose or provision of co-option is not unknown in the managing committee and for substantiating his submission he relied upon the provisions of section 74B of the Act. The said contention is misconceived on the face of it in as much as what is provided under subsection (3) of section 74C is to have an overriding effect over any byelaws of such society and it is not having overriding effect over any other statutory provisions of the Act. Therefore, section 74B providing for co-option is not nullified but what is nullified is the provisions made under byelaws providing for any mode of induction of any person as member of the managing committee and therefore said contention of Mr.Mehta can not be accepted. In my view, except the mode which is provided under subsection (3) of electing the members of the managing committee, there can not be any provision in the byelaws and even if such provision is there in the byelaws, it can not nullify the

effect or force of the statutory provisions of section 74C(3) and therefore it can not be read that if the byelaw provides for co-option of any person the means induction by election of those who are to be elected as members of the managing committee as sought to be canvassed and contended by Mr.Mehta. Therefore, the only conclusion which can be drawn is that the provisions made under byelaw 35(1)(A) so far as it relates to co-option of three women representatives as members of the managing committee is in contravention to statutory provisions of section 74C(3) of the Act and such byelaws can not be given effect to on the face of statutory provisions and therefore any action pursuant to the above byelaw 35(1)(A) can not be said to be legal in the eye of law nor the society who is respondent No.1 herein can be allowed to induct such persons on the basis of aforesaid part of byelaw 35(1)(A).

9. The aforesaid takes me to examine the provisions of other part of byelaw 35(1) so far as it relates to giving representation to more than one person for each constituency. The Rule 3A(8) which is relevant reads as under;

> "3A(8) Where the area of operation of a society in more than one village, the number of constituencies will be equal to the total number of seats excluding two seats reserved under subsection (1) of section 74-B."

Plain and simple reading of Sub-rule (8) of Rule 3A shows that the number of constituencies has to be equal to the total number of seats excluding two seats reserved under subsection (1) of Section 74B. Section 74B provides for co-option of reserved category which is not relevant in the present group of petitions. However, the language used in sub-rule (8) of Rule 3A makes it clear that as a consequence of Sub.rule (8) there will be one seat for one constituency. If one constituency provides for more one seat the same would not be in conformity with the provisions of Sub.rule(8). Similarly, if for each constituency the seat is provided for not more than one it may be in conformity with subrule(8) of Rule 3A.

10. Keeping in view the aforesaid interpretation on Rule 3A(8), if the byelaw 35(1)(A) is examined, it is apparent that for constituency of Malpur, Meghraj taluka, Bhiloda, Khedbrahma and other constituencies representatives are provided of seats more than one though the constituency is one in each case. Therefore, in my view when the statutory rules provide seat shall

not be more than one for each constituency, the byelaw would not be in conformity and would stand in contravention to subrule (8) of Rule 3A and hence such byelaws can not be maintained nor can be allowed to operate. It is well settled that the statutory rules shall march over operation of byelaws and no byelaw can be allowed to be maintained on the face of statutory rules. When the court has to give effect between the byelaws and the statutory rules the court will give effect to statutory rules and not the byelaws if such byelwas are in conflict with rules. If the byelaws are in conflict or are nullifying the effect of statutory rules such byelaws deserve to be ignored for the purpose of properly enforcing the statutory rules. Therefore, if the Sangh is desirous to hold the election of the members managing committee as per byelaw 35(1)(A) by providing seats for more than one person for each constituency, such can not be permitted. As such, it would be ultimately on the part of respondent No.1-Sangh to amend the byelaws to make it in conformity with Rule 3A(8) of the Rules. The aforesaid is without prejudice to the rights and contentions of the petitioner-respondent No.1 Sangh in SCA No.6524/03. In case this court finds that Rule 3A(8) is unconstitutional or void matter would be different but till then the rule should be allowed to operate and merely because challenge is made to the constitutional validity of the rule, the effect and enforceability of the rule can neither be nullified diluted.

11. In view of the aforesaid discussion and observations qua the validity or Byelaw 35(1)(A) matter will have to be considered for the purpose of ordering the election of the members of the managing committee. There is no dispute on the point that the election has become due. It may be that in the past the election might have been held on the basis of byelaw 35(1)(A). However, it is not even the case of the respondent No.1 sangh that the validity of Byelaw 35(1)(A) was examined by this court or by any competent forum known to law and it has stood by the said test. When this court in view of the aforesaid observations has found that the Byelaw 35(1)(A) so far as giving representation to more than one person in each constituency is illegal and when this court has found that the byelaw providing induction by cooption of three women representatives in the members of the managing committee is illegal, the election for the members of the managing committee of the respondent No.1-Sangh should be held as per the provisions of law and the byelaw to that extent as found to be illegal will have to be ignored. It may be for the respondent No.1

sangh at its general body meeting to consider the matter for amending the byelaws to make in conformity with the provisions of Section 74C(3) of the Act or in conformity with Rule 3A(8) of the Rules, but merely because the amendment is not carried out or that the general body of the sangh has not considered positively, the election of the specified society like the respondent No.1 can not be allowed to be in dormant or in any event can not be stalled further. With a view to see that the efforts of stalling of election would not result into benefiting those who have lost the mandate of voters the provisions of section 74D are enacted by the legislature. Therefore, proper care is required to be taken to see that in any case before the expiry of the period of six months from the date on which the election becomes due, which is in the present case upto 24.1.04, the election of the members of the Managing Committee is held and not only held but newly elected body is allowed to assume the office and in case if for one reason or the other the elected body is not permitted to assume the office or the elections is not held, in that case, the present managing committee has to go and custodian should be appointed after the expiry of six months, i.e. after 24.1.2004. Equally, the court would see to it and ensure that the elected representatives of the voters are allowed to resume the office and to function in accordance with law because as observed earlier the election has already become due and the election should be held in time. It is undisputed position that the election has become due and therefore the election as observed earlier can not be stalled until the byelaws are amended by the general body of the society. Further, as observed earlier the statutory provisions of the Act and Rules would not operate over any byelaws. Therefore, the election of respondent No.1-Sangh deserves to be ordered keeping in view the effect of statutory provisions and by maintaining the byelaws only to the extent it does not operate in conflict with the statutory provisions of the Act or Rules, as the case may be. Consequently, the net effect of earlier observations would be that byelaw 35(1) so far as it provides for co-option of three women representatives as in the members of the Managing Committee can not be given effect and in the same manner byelaw 35(1)(A) so far as it relates for providing representation of more than one member for each constituency also can not be given effect.

12. Mr.Mehta as well as Mr.Patel for respondent No.1 and the petitioner respectively, as observed earlier, have submitted that the election can be held as per 13 zonewise divisions which is placed on record. I am

afraid such contention can be accepted at this stage because the byelaw do not provide for such zonewise division. Ultimately, it will be for the respondent No.1 to amend the byelaws accordingly and if the byelaws are accordingly amended the matter would be considered for the purpose of holding the elections subsequently. At this stage, since the byelaws are not amended I am not inclined to accept the request of Mr.Mehta as well as Mr.Patel to order for holding of election as per zonewise constituency.

13. The submission of Mr.Patel on behalf of petitioner so far as it relates to giving representation to Milk Cooperative Societies of Vadali, Talod and Dhansura are concerned, prior to formation of independent revenue taluias, as such, it has been submitted by Mr.Mehta that for the societies situated in new revenue talukas of Vadali, Talod and Dhansura were given representation in the concerned constituencies And therefore as such those societies which are member cooperative societies of respondent No.1 will have right to vote and to participate at the election. Under the circumstances, when there is already representation of such cooperative societies for which the grievance is voiced by the petitioner in respective constituency on the basis of taluka which existed prior to formation of these three talukas, until the byelaws are amended by the society of forming independent constituencies of newly formed revenue talukas, namely, Vadali, Talod and Dhansura, it can not be permitted that there should be separate constituency for each taluka. Byelaw 35(1)(A) provides for various constituencies and there are seven divisions. Therefore, it can not be said that it must be on the basis of new revenue talukas formed. It may be that at the relevant point of time when the byelaws were framed the divisions or constituencies might have been formed keeping in view the area of revenue taluka but that does not mean that if the new revenue taluka is formed or constituted it would be obligatory on the part of the Sangh to independently form the constituency nor can it be considered as one of the valid grounds for holding election which has become due by forming separate constituency of Vadali, Talod and Dhansura. As observed earlier, since such cooperative societies are already given representation in the constituency which is made divisionwise, no serious prejudice will be caused if the election is ordered to be held constituencywise as per byelaw 35 keeping the representation as in existence.

14. Mr.Mehta made an attempt to submit that in certain areas, division or constituency there are more

number of voters, namely, more number of milk cooperative societies and the society is getting more milk from such area and therefore they can be given representation. I am afraid such contention can be accepted on the face of provisions of Rule 3A(8) of the Rules. As observed earlier, it will be for the society to frame the byelaws or to amend the byelaws for formation of constituencies and the considerations may be various including that may be revenue taluka, quantity of milk etc but in any case once the constituency is formed it can not have representation except one seat as per the provisions of Sub-rule (8) of Rule 3A and therefore until the society decides to form independent or separate constituency amending the byelaws, the election can not be stalled nor can be ordered to be held on the basis of quantity of milk. As observed earlier, it is the say of the respondent No.1 that the matter was placed before the general body of the society and the general body has deferred the question of making amendment in the byelaws and therefore as observed earlier until the general body takes decision for amendment of byelwas or otherwise, the election of the respondent No.1 society can not be put in standstill position or can not be stalled further more particularly because period of two months has already passed after the expiry of statutory term of three years on 25.7.03. As such an opportunity was given by this court as per order dated 28.3.03 to the general body of the respondent No.1 society to consider the matte for amendment in the byelaws. However, the ground may be justifiable or otherwise, but the fact remains that the byelaws are not amended by the general body of the society. Even the resolution is not passed by the general body of the society for amendment of byelaws making it in conformity with the provisions of section 74C(3) and Rule 3A(8) of the Rules.

15. Mr.Patel made an attempt to submit that since the total number of vacancies in the managing committee are 13, it can not be reduced to 7 and the Collector has power under Rule 3A(9) for delimiting the constituency and therefore he submitted that such discretion or power may be left to the Collector. I am afraid such contention can be accepted because the delimitation of the constituency can be read as formation of a constituency. Formation of constituencies is provided as per byelaws and therefore if read accordingly the power of delimitation would operate to the extent of identifying such constituency and inclusion of voters in such constituency and in any case subrule (9) of Rule 3A is for giving effect to or to have overriding effect over byelaws providing for time schedule of delimitation of

constituency and it can not be read as authorising the collector to independently form the constituency which are otherwise not provided under the byelaws and therefore such contention is not accepted.

16. In view of the aforesaid discussion and observations, Special C.A.No.766/03 is partly allowed to the extent that the respondent Nos 1 to 4 and, more particularly, the respondent No.4 is directed to hold the election of the members of the Managing Committee of the respondent No.1-society for the election of 7 representatives as per constituencies and seven divisions provided under byelaw 35(1)(A) and it is made clear that each constituency will have only one seat in the managing committee, and further no co-option of women representative shall be made in the managing committee as per byelaw 35(1)(A). It is further made clear that as a consequence of earlier observations the byelaw 35(1)(A) shall remain valid only to the extent of having 7 representatives to be elected from 7 constituencies in the managing committee of respondent No.1.

17. The process from the stage of preparation of voters' list till actual election shall be completed by respondent Nos 1 to 4 within a period of two months from today and within three weeks from the date of declaration of result of the election, the first meeting of members of the managing committee shall be held for electing the office bearers of respondent No.1 as per section 145Z of the Act.

18. After the election is held respondent No.3 shall give appropriate directions under section 14 of the Act to respondent No.2-3 to amend the byelaws keeping in view the observations made by this court and further steps shall be taken in accordance with law. It is made clear that any amendment which is approved or which may be pursuant of the directions of the Registrar shall not be treated as bar in any manner in the process of holding election as ordered earlier.

19. In view of aforesaid directions to hold the election of members of the managing committee and for holding the first meting after declaration of result, I find that such exercise shall be undertaken in any case on or before 24.1.04 i.e. prior to expiry of period of six months from the date on which the election has become due, and hence, no further order is required to be passed in SCA No.9756/03 and the prayer for appointment of custodian would become infructuous in as much as prior to 24.1.04 as ordered earlier the elections are to be over

and even the newly elected body has to take charge and therefore there is no question of appointment of custodian upto 24.1.04 and therefore SCA No.9756/03 shall stand disposed of accordingly.

20. Rule in SCA No.766/03 is made absolute to the aforesaid extent. There shall be no order as to costs.

21. Subject to the aforesaid observations, notice in SCA No.9756/03 is discharged. There shall be no order as to costs.

22. In view of orders in SCA No.766/03 no order in CA Nos 4532, 4533, 3787/03. All the CAs stand disposed of accordingly. There shall be no order as to costs.

11.9.03 (JAYANT PATEL,J)